



Federal Communications Commission
Washington, D.C. 20554

August 12, 2003

DA 03-2640

Jonathan D. Blake, Esq.
Christine E. Enemark, Esq.
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, D.C. 20004

Re: Banks Broadcasting, Inc.

Dear Mr. Blake and Ms. Enemark:

Banks Broadcasting, Inc. ("Banks"), a winning bidder in Auction No. 44, seeks to correct a "typographical error" it allegedly made on its FCC Form 175 ("short-form") application related to its bidding credit eligibility.¹ Specifically, Banks states that in describing its small business status on the first page of its application, it inadvertently selected the 15 percent bidding credit, denoting a "small business" rather than the correct figure of 25 percent, indicating a "very small business."² In Exhibit C to its short-form application, Banks explicitly certifies that it "qualifies as a 'very small business'" and provides revenue information supporting that assertion.³ Shortly after Auction No. 44 began, Banks submitted a letter ("Letter") to the Auctions and Industry Analysis Division ("Division"), notifying it of a proposed "minor correction" to its short-form application.⁴ Banks proposed to correct the bidding credit it selected on the first page of its application. In addition to the Letter, Banks also filed a Petition for Correction with its long-form application asking the Commission to correct the payment information for Banks included in the Public Notice announcing the winning bidders in Auction No. 44.⁵ Banks asks that the payment information be changed to reflect Banks's status as a "very small business" rather than a "small business." For the reasons set forth below, we grant Banks's request to amend the first page of its short-form application to make it consistent with its assertion and revenue information included in Exhibit C.

¹ See Letter from Jonathan D. Blake, Counsel to Banks Broadcasting, Inc. to Margaret Wiener, Chief, Auction and Industry Analysis Division, Federal Communications Commission, August 28, 2002 (the "Letter").

² *Id.*

³ *Id.*; see also FCC Form 175, Exh. C, as submitted by Banks on May 8, 2002.

⁴ Letter at 1-2.

⁵ Petition for Correction, filed by Banks on October 3, 2002 ("Petition").

On March 20, 2002, the Wireless Telecommunications Bureau released a Public Notice announcing the start date and other procedures governing Auction No. 44.⁶ The *Auction No. 44 Procedures Public Notice* required applicants to submit, by May 8, 2002, Form 175 and indicate their small business status, if any, on the application.⁷ There were 734 Metropolitan Statistical Areas (“MSAs”) and Rural Service Areas (“RSAs”) and six Economic Area Groupings (“EAG”) licenses offered in Auction No. 44. For the 734 MSA/RSA licenses, there were three categories of small businesses: (i) a bidder with attributed average annual gross revenues of not more than \$40 million for the preceding three years (“small business”) could receive a 15 percent bidding credit on any winning bids; (ii) a bidder with attributed average annual gross revenues of not more than \$15 million for the preceding three years (“very small business”) could receive a 25 percent bidding credit on any winning bids; and (iii) a bidder with attributed average annual gross revenues of not more than \$3 million for the preceding three years (“entrepreneur”) could receive a 35 percent bidding credit on any winning bids.⁸

On May 8, 2002, Banks submitted its short-form application. The application reflected an inconsistency in that page one showed that Banks had asked for a 15 percent bidding credit, but Banks’s Exhibit C stated that Banks was seeking a 25 percent bidding credit. Banks’ short-form application was accepted and Banks was a qualified bidder participating in Auction No. 44 with a 15 percent bidding credit.⁹

On August 27, 2002, the Commission began Auction No. 44. On August 28, 2002, the second day of the auction, Banks filed its Letter, notifying the Commission that it sought to change its designation on the first page of its short-form from small to very small business. Banks argues that this revision constitutes a permissible minor amendment under Section 1.2105(b)(2) of the Commission’s rules.¹⁰ Section 1.2105(b)(2) permits applicants to amend or modify Form 175 “to make minor changes or correct minor errors in the application.”¹¹

Banks claims that its incorrect selection of a 15 percent bidding credit on the first page of its short-form was “due to a computer inputting error.”¹² To support its position, Banks points out that its Exhibit C expressly states that it qualifies as a “very small business” and that the underlying revenue

⁶ Auction of Licenses in the 698-746 MHz Band Scheduled for June 19, 2002, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures, *Public Notice*, 17 FCC Rcd. 4935 (2002) (“*Auction No. 44 Procedures Public Notice*”).

⁷ 17 FCC Rcd at 4954-55; *see also* 47 C.F.R. § 1.2105(b)(2).

⁸ 17 FCC Rcd at 4954-55.

⁹ Auction of Licenses for 698-746 MHz Band, Status of FCC Form 175 Applications to Participate in the Auction, Extension of Upfront Payment Deadline, *Public Notice*, 17 FCC Rcd 9415, Att. A, p. 1 (2002); Auction of Licenses for 698-746 MHz Band, 128 Qualified Bidders, *Public Notice*, 17 FCC Rcd 10700, 10708 (2002); Auction No. 44, Revised Qualified Bidder Notification, 125 Qualified Bidders, *Public Notice*, 17 FCC Rcd 15543, Att. A, p. 1 (2002).

¹⁰ Letter at 2; Petition at 2.

¹¹ 47 C.F.R. § 1.2105(b)(2).

¹² *See* Petition at 2, and attached Declaration of Christopher M. Petite, Senior Legal Assistant, Covington & Burling.

figures support its contention.¹³ On October 3, 2002, Banks filed its Petition. Attached to Banks's Petition was a declaration from a senior legal assistant stating that the error on the front page resulted from either a "computer glitch" or a "typographical error."¹⁴ In its Petition,¹⁵ Banks also seeks to correct information included in the *Winning Bidders' Public Notice* that, among other things, announced that Banks had won two licenses, CMA 089 and CMA 390, and listed the associated net bid and gross bid amounts, based on a 15 percent bidding credit.¹⁶ Banks asks that the Commission correct the total net bid for the two licenses, initial down payment, amount applied, and balance information to reflect that Banks will receive a 25 percent bidding credit.¹⁷

We will permit Banks to amend the first page of its short-form to reflect its eligibility for the 25 percent bidding credit associated with a "very small business." In doing so, we agree with Banks that this change constitutes a permissible minor amendment under § 1.2105(b)(2) of the Commission's Rules.¹⁸ This change brings the first page of Banks's short-form into conformance with the certification and revenue information provided in its Exhibit C. Banks's Exhibit C shows that the applicant certified that it qualified as a "very small business." To support its certification in Exhibit C, Banks provided revenue figures that show that its gross average annual revenues for the three preceding years averaged less than \$15 million. These figures support Banks's claim of eligibility for "very small business" status. In asking that we allow the applicant to correct its short-form, Banks is not attempting to change its certification or revise the revenues it reports on its Exhibit C. Instead, Banks merely asks that we allow it to conform the first page of its short-form with the showing and certification of eligibility for a 25 percent bidding credit on its Exhibit C. Moreover, we believe that no bidder was prejudiced by reliance on the error on the first page of Banks's short-form because a review of Banks's Exhibit C revealed that Banks was seeking and had demonstrated that it qualified for the higher 25 percent bidding credit. Banks's short-form, along with its Exhibit C, which reflected the certification as a "very small business" and its supporting revenue figures, were available to all bidders throughout the auction.¹⁹

¹³ *Id.* at 1.

¹⁴ *See* Letter at Attachment, pp. 1-2.

¹⁵ Petition at 1-3.

¹⁶ Lower 700 MHz Band Auction Closes, Winning Bidders Announced, Down Payments Due October 4, 2002, Ten-Day Petition to Deny Period, *Public Notice*, DA 02-2323, Att. A, pp. 4, 13; Att. B, p. 1 (rel. September 20, 2002)

¹⁷ Petition at 1-2.

¹⁸ *See* 47 CFR § 1.2105(b)(2).

¹⁹ Our disposition of Banks's request is distinguishable from the Commission's ruling in *Two Way Radio of Carolina, Inc.* *See* *Two Way Radio of Carolina, Inc., Memorandum, Opinion and Order*, 14 FCC Rcd 12035 (1999). There, the applicant, Two Way Radio, filed a waiver request after the auction closed, asking the Commission to permit it to change the revenue information reported in Exhibit C of its short-form so that it would qualify for a larger bidding credit than the one it claimed on its application. In affirming the decision to deny Two Way Radio's waiver request, the Commission stated, among other things, that "providing Two Way Radio with more favorable financial benefits after the close of the auction, based upon information not available to other bidders during the auction, would adversely affect the integrity of the auction process." *Id.* at 14 FCC Rcd at 12039. In the instant case, Banks does not seek to revise the revenues that it reported and made available to all bidders during the auction.

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Accordingly, for the reasons discussed above, we grant Banks's request to make the minor amendment to its short-form application to conform it to the bidding credit to which Banks certified. This action is taken under delegated authority pursuant to Section 0.331 of the Commission's rules.²⁰

Sincerely,

Margaret W. Wiener
Chief, Auctions and Industry Analysis Division
Wireless Telecommunications Bureau

²⁰ 47 C.F.R. § 0.331.